

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1893.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 721.]

The Committee on Claims, to whom was referred the bill (S. 721) for the relief of Peter Grant Stewart, of Oregon, having considered the same make report as follows:

The object of this bill is to pay to Peter Grant Stewart, of Gervais, Oregon, the sum of \$15,000 in full for property owned by him and taken by the United States, and included in a military reservation near the mouth of the Columbia River, in Pacific County, now State, then Territory, of Washington, taken under and by virtue of an Executive order dated February 26, 1852.

Mr. Stewart was one of the earliest pioneers of the northwestern Pacific coast, going there in the year 1843. The testimony and certificates of many citizens attest to his high character as a man, his usefulness and public spirit as a citizen of that remote and unorganized community. He was one of the few pioneers who organized the provisional government for the Territory of Oregon before the extension of the laws of the United States over it, while it was yet claimed as part of the British possessions, and it was largely through the action of such men as Mr. Stewart and his associates that law and order were maintained in that region during those formative years and the region itself secured to the United States. Among other rules laid down by the early provisional government of the Territory of Oregon, was one for the acquirement of public lands, recognized by the people of that region and in accordance with which they initiated their claims and established their possessions. These rules were afterwards recognized in the laws of Oregon and the United States, and that in regard to land was practically adopted by the United States in the enactment of what is commonly known as the Oregon donation act.

Some time prior to the year 1852, under this system, what was known as the Pacific City donation claim was located on the north bank of the Columbia River at its mouth; a body of 640 acres of land, bounded by the Pacific Ocean on the west, Baker's Bay and the mouth of the river on the east and south. This land was originally taken up by one John E. Pickernell, who afterwards, and about the year 1850, sold his possessory right to one Dr. Elijah White. Under the provisional laws referred to, White was the bona fide owner of the possessory right to this land, and laid off a portion of it into a town site called Pacific City.

The situation of this land at the mouth of the Columbia River rendered it valuable. In the year 1850 Peter Grant Stewart purchased of White certain lots and blocks in said city, as set out in exhibit, for which he paid in cash \$2,500. (See Exhibit A, hereto attached and made part hereof.) The property continued increasing in value until taken for a military reservation February 26, 1852.

It is claimed by Stewart his lots had increased in value to \$10,000; that after his purchase Stewart took possession of his property and commenced to clear the same and prepared a portion of it for a garden, and in the month of April, 1850, went to San Francisco and purchased iron plates for the construction of a house. Said plates were cut and punched, to be put together with screws and bolts. He testifies he paid for the material, including shipping and putting up this house upon his grounds, \$4,000.

The public surveys were not extended over this region until some years afterward. On the 24th day of February, 1852, Hon. C. M. Conrad, Secretary of War, made the following recommendation, which was approved February 26, 1852:

WAR DEPARTMENT,
Washington City, February, 24, 1852.

SIR: I have the honor to recommend that the following tracts of land in * * * and Oregon, which have been selected for military purposes by the Joint Commission for Examination of the Pacific Coast, be accordingly reserved from sale or grant, viz:

* * * * *

IN OREGON.

Cape Disappointment, at the northern side of the mouth of the Columbia River, Oregon, to include all the land lying within $1\frac{1}{2}$ miles of the southern point of the cape.

Point Adams, at the southern side of the mouth of the Columbia River, to include all the land lying within $1\frac{1}{2}$ miles of the northernmost part of the point.

Very respectfully, your obedient servant,

C. M. CONRAD,
Secretary of War.

THE PRESIDENT OF THE UNITED STATES.
Approved February 26, 1852.

MILLARD FILLMORE.

The land set apart in this reservation embraced most of the town site of Pacific City and all the lots and blocks aforesaid claimed and owned by claimant, Stewart. Mr. Stewart, also, in company with others, organized a company to build a sawmill on portions of said property under the name of "The Pacific Milling Company," and paid into said company to build the mill \$2,916.43.

This milling property was also taken by the United States as a part of said reservation, and was estimated to be worth at the time about \$15,000. Mr. Stewart represents that the aggregate value of his property thus taken and appropriated by the United States, including his interest in the milling property, which cost him \$2,916.43, was more than \$15,000. Several reliable witnesses testify of their personal knowledge to the presence of Mr. Stewart in Pacific City at these times; of the iron house he built and occupied; to his engagement in erecting and working in the sawmill, and cutting logs for its use until about the year 1852; that the iron house was one story high and contained three rooms.

That subsequent to the settlement, the building of the house as aforesaid, and the making of the other improvements hereinbefore referred to by claimant, Peter Grant Stewart, the Congress of the United States

in an act entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands," approved September 27, 1850 (Vol. 9, U. S. Stats. at Large, p. 500), provided a means of obtaining title by private individuals to the lands in the then Territory of Oregon by settlement and cultivation, section 14 of which act provided as follows:

SEC. 14. *And be it further enacted*, That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the President of the United States for forts, magazines, arsenals, dockyards, and other needful public uses shall be reserved and excepted from the operation of this act: *Provided*, That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation the improvements of any settler made previous to the passage of this act, it shall in such case be the duty of the Secretary of War to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

It will thus be seen that the Congress in extending the land laws over the then Territory of Oregon, which then included Washington, provided in terms for the payment of precisely such claims as that of the claimant herein. It seems that in this case, while the land settled upon and improved by the claimant was included in the military reservation under authority of the President of the United States, that the Secretary of War never complied with the duty imposed upon him by section 14 of the act aforesaid, and that he never caused the value of claimant's improvements to be ascertained or paid.

It has been made to appear to your committee that there was also included within the boundaries of the military reservation aforesaid the claim of one James D. Holman, he making claim under the donation act of Congress of September 27, 1850, aforesaid. This claim was separate and distinct from the claim of claimant herein, and did not include the same property, but was for the improvements made by said Holman on his said donation claim. The Congress, on March 1, 1879 (U. S. Stats. at Large, Vol. 20, p. 604), by special act appropriated the sum of \$25,000, which amount Mr. Holman received in full satisfaction for the value of his improvements thus taken by the United States, and no part of which covered any part of the property or improvements for which compensation is claimed herein.

It is further shown to your committee that the legislatures of the States of Oregon and Washington have each memorialized Congress praying that the equities of the claimant, Mr. Stewart, may be recognized by special act, making such appropriation as may be deemed reasonable and right, to compensate him for the value of his claim and improvements thus taken.

In view, therefore, of all the circumstances, your committee are of the opinion that this claim has strong equities, if it is not indeed a legal claim, growing out of the provisions of the fourteenth section of the act of Congress aforesaid, for compensation for the value of the improvements thus included in the military reservation as aforesaid; and your committee are of the opinion that \$7,500 is not an unreasonable amount. These improvements were taken over forty-one years ago, and no claim or allowance is made for interest.

In view of all the circumstances, therefore, your committee report back bill S. 721 with the following amendments, and so amended recommend its passage:

In line 5, page 1, strike out the following words: "fifteen thousand," and insert in lieu thereof "seven thousand five hundred." Also insert at the end of the bill the words "fifty-two."

EXHIBIT A.

The whole of block No. 56, in the town of Pacific City, county of Lewis, Territory of Oregon, agreeable to the survey and plat of the town of Pacific City as made by Washington Hall, esq., for Elijah White. Also the whole of blocks Nos. 62, 60, 100, 120, 146, 160, 189. Also the fraction lying in front of said block No. 62, all in said town of Pacific City. Also the whole of blocks Nos. 4, 30, 52, 72, 92, 112, 135, 153 and 181, all in said town of Pacific City.